

On appeal appellant asserts that OWCP improperly rescinded acceptance of her claim.

FACTUAL HISTORY

On September 22, 2011 appellant, then a 48-year-old contact representative, filed a traumatic injury claim alleging that she cracked a bone in her left foot when she slipped and fell on stairs on September 19, 2011. In a November 3, 2011 statement, she indicated that, while working at home in her upstairs office, she had trouble with her internet connection and was going up and down stairs to try and resolve the problem so that she could keep working. While going upstairs, appellant twisted her ankle and fell down approximately five to six stairs, landing at the bottom. The statement described her medical care. On November 8, 2011 the employing establishment reported that appellant fell at the workplace and was in the performance of duty on September 19, 2011. OWCP accepted that she sustained an employment-related fracture of the left tarsal and metatarsal bones.

On November 18, 2011 OWCP advised that it had learned that appellant was teleworking on September 19, 2011. It asked the employing establishment to furnish her position description and additional information, including her telework agreement, information regarding the ownership of the computer equipment, the workstation requirements, responsibility for providing the internet connection, and whether the employing establishment knew that computer equipment was located in the basement.

In a November 30, 2011 telephone conference with OWCP, appellant stated that she paid for the internet connection which was routed to her basement, and that her computer equipment was upstairs and was owned by the employing establishment. On September 19, 2011 she was having problems with the internet connection. Appellant contacted her internet provider and followed its instructions on how to correct the problem, which entailed going up and down the stairs. She advised that she returned to full duty on November 21, 2011.

Appellant provided a telework agreement and a telework safety checklist that was not completed.³ On December 9, 2011 Denise Dinwiddie, a human resources assistant, maintained that the employing establishment assumed that appellant's internet connection was in her immediate work space and that its location in the basement was not within the intent of the self-certification safety checklist.

On January 19, 2012 OWCP proposed to rescind acceptance of the September 19, 2011 injury on the grounds that appellant was not in the performance of duty when injured. It determined that maintenance of the internet connection, which appellant owned, was not part of her official duties.

Appellant disagreed with the proposed rescission, contending that her job required an active and stable internet connection. She attached copies of her position description, telework policies, and FECA Bulletin No. 98-09 that discussed alternative work sites.

³ The agreement was not signed and does not include an alternative work site address. The agreement stated, "the employee understands that he or she is covered by [FECA] if injured while performing official duties at the alternative work site." A second unsigned copy of the telework agreement was submitted on December 16, 2011.

By decision dated April 6, 2012, OWCP rescinded acceptance of appellant's claim finding that she was not in the performance of duty on September 19, 2011.

Appellant filed an appeal with the Board on June 29, 2012. The appeal was dismissed at her request by order dated September 28, 2012.⁴

On April 4, 2013 appellant requested reconsideration. She asserted that she was in the performance of duty on September 19, 2011, noting that she had to provide the internet connection which was located in her basement. Appellant contended that she was performing an activity reasonably incidental to her employment.

In an April 15, 2013 decision, OWCP denied appellant's reconsideration request. It found that her contentions were cumulative and substantially similar to evidence and documentation previously considered and not a basis for reopening her claim for merit review.

LEGAL PRECEDENT

Section 8128(a) of FECA vests OWCP with discretionary authority to determine whether it will review an award for or against compensation, either under its own authority or on application by a claimant.⁵ Section 10.608(a) of the Code of Federal Regulations (C.F.R.) provides that a timely request for reconsideration may be granted if OWCP determines that the employee has presented evidence and/or argument that meet at least one of the standards described in section 10.606(b)(3).⁶ This section provides that the application for reconsideration must be submitted in writing and set forth arguments and contain evidence that either: (i) shows that OWCP erroneously applied or interpreted a specific point of law; or (ii) advances a relevant legal argument not previously considered by OWCP; or (iii) constitutes relevant and pertinent new evidence not previously considered by OWCP.⁷ Section 10.608(b) provides that when a request for reconsideration is timely but fails to meet at least one of these three requirements, OWCP will deny the application for reconsideration without reopening the case for a review on the merits.⁸

ANALYSIS

The only decision before the Board in this appeal is the decision of OWCP dated April 15, 2013 denying appellant's application for review. Because more than 180 days elapsed between the date of OWCP's most recent merit decision dated April 6, 2012 and the filing of this

⁴ Docket No. 12-1662 (issued September 28, 2012).

⁵ 5 U.S.C. § 8128(a).

⁶ 20 C.F.R. § 10.608(a) (2011).

⁷ *Id.* at § 10.606(b)(3) (2011).

⁸ *Id.* at § 10.608(b) (2011).

appeal with the Board on October 10, 2013, the Board lacks jurisdiction to review the merits of her claim.⁹

OWCP rescinded acceptance of appellant's claim for a September 19, 2011 left ankle injury in a merit decision dated April 6, 2012 on the grounds that she was not in the performance of duty when injured. Appellant requested reconsideration on April 4, 2013, and in a statement dated April 5, 2013, asserted that she was in the performance of duty when injured. The Board finds the evidence submitted is insufficient to warrant merit review.

With her April 4, 2013 reconsideration request, appellant repeated her assertion that she was in the performance of duty on September 19, 2011 because she was required to maintain an active internet connection. She made the argument in response to the January 19, 2012 notice to rescind. The argument was therefore repetitive.¹⁰ Appellant did not allege or demonstrate that OWCP erroneously applied or interpreted a specific point of law, or advance a relevant legal argument not previously considered by OWCP. Consequently, she was not entitled to a review of the merits of her claim based on the first and second above-noted requirements under section 10.606(b)(2).¹¹

With respect to the third above-noted requirement under section 10.606(b)(2), appellant submitted no additional evidence. As she did not submit relevant and pertinent new evidence not previously considered by OWCP, it properly denied her reconsideration request.¹²

CONCLUSION

The Board finds that OWCP properly refused to reopen appellant's case for further consideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

⁹ *Id.* at § 501.3(e).

¹⁰ Evidence or argument that repeats or duplicates evidence previously of record has no evidentiary value and does not constitute a basis for reopening a case. *C.N.*, Docket No. 08-1569 (issued December 9, 2008).

¹¹ 20 C.F.R. § 10.606(b)(2).

¹² *Id.*

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated April 15, 2013 is affirmed.

Issued: April 11, 2014
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board